

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE**

IN THE MATTER OF INTEGRATED)
RESOURCE PLANNING FOR THE)
PROVISION OF STANDARD OFFER)
SERVICE BY DELMARVA POWER &)
LIGHT COMPANY UNDER 26 *DEL. C.*)
§§1007(c) & (d) (Opened December 18, 2012))

PSC DOCKET NO. 12-544

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COMMENTS OF THE DIVISION OF THE PUBLIC ADVOCATE

Pursuant to the procedural schedule approved by the designated Hearing Examiner, David L. Bonar, Public Advocate for the State of Delaware, by and through his counsel, submits the following comments on Delmarva Power & Light Company's ("Delmarva" or the "Company") 2012 Integrated Resource Plan ("IRP") to the Delaware Public Service Commission (the "Commission").

Overall, the Public Advocate believes that the IRP requirement should be abolished. In a deregulated supply situation such as Delaware's, in which the incumbent electric utility no longer owns any generation facilities, every supplier of electricity – not simply the electric distribution company subject to this Commission's regulation – has an incentive to obtain wholesale energy for resale at the lowest possible costs consistent with its obligations under the Renewable Energy Portfolio Standards Act (the "REPSA") and consistent with the obligations to which it is subject as a member of the independent system operator, PJM Interconnection, Inc. ("PJM"). Although there are several energy suppliers operating in Delaware (third-party competitive suppliers, the Delaware Electric Cooperative ("DEC"), municipal utilities such as the Cities of Dover, Newark and New Castle), only *Delmarva* is subject to the IRP requirement and therefore only *Delmarva* customers bear the significant expense of the IRP process.

The Public Advocate is aware that the Commission cannot abolish the IRP requirement itself. But a Commission conclusion that it *should* be abolished could go a long way toward convincing the current General Assembly that it is time to bury the IRP. Quite simply, the IRP is an anachronism whose time has long been gone and which represents a substantial amount of a Delmarva customers' monthly bills for which there is no discernible benefit.

Background

Integrated resource planning began in the late 1980s in response to the oil embargoes of the 1980s and nuclear construction cost overruns occurring in the late 1970s and into the 1980s, which led to several utilities in the New England region declaring bankruptcy.¹ As defined in the federal Energy Policy Act of 1992, integrated resource planning for an electric utility means:

... a planning and selection process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, in order to provide adequate and reliable service to its electric customers at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply resources on a consistent and integrated basis.

16 U.S.C. §2602(19) (cited in Synapse Study at 2). According to the Synapse Study, integrated resource planning means ensuring the long-term reliability of delivered energy at the lowest practical cost.²

The General Assembly established Delmarva's IRP requirement in 2006 in response to the transition to a deregulated energy supply. When price caps expired in 2006 and Delmarva customers were finally exposed to market rates, the increase was staggering: a nearly 60%

¹ R. Wilson and P. Peterson, "A Brief Study of State Integrated Resource Planning Rules and Requirements (April 28, 2011) (Prepared for the American Clean Skies Foundation) at 1.

² Synapse Study at 3.

increase for residential customers, and even larger increases for industrial customers. In response to public outcry over these increases, the General Assembly passed the Electric Utility Retail Customer Supply Act (“EURCSA”), in which it created the IRP requirement. 75 Del. Laws c. 242.

The EURSCA requires Delmarva to file an IRP every two years, starting in 2006. It defines integrated resource planning as “the planning process of an electric distribution company that systematically evaluates all available supply options, including but not limited to: generation, transmission and demand-side management programs, during the planning period to ensure that the electric distribution company acquires sufficient and reliable resources over time that meet its customers’ needs at a minimal cost.” 26 Del. C. §1001(16). Delmarva must “systematically evaluate all available supply options during a 10-year planning period in order to acquire sufficient, efficient and reliable resources over time to meet its customers’ needs at a minimal cost;” must set forth Delmarva’s supply and demand forecast for the next 10-year period and the resource mix with which Delmarva proposes to meet its supply obligations; and cannot rely exclusively on any particular resource or procurement process. *Id.* §1007(c)(1)a. Beginning in 2009, Delmarva was statutorily required to submit a report to the Commission, the Governor and the General Assembly that details its progress in implementing its IRPs. *Id.* §1007(c)(1)b. Finally, EURCSA provides that Delmarva shall recover the costs that it incurs in developing and submitting its IRPs through its distribution rates. *Id.* §1007(c)(1)d.

Considerations Outside the IRP Process Affect Delmarva’s Selection and Evaluation of Supply Options and Render the IRP Process Essentially Useless.

Much of how Delmarva obtains its supply is governed by factors wholly outside the IRP process. Statutory mandates regarding procurement and types of supply and EPA and PJM mandates limit the extent to which Delmarva can exercise discretion in obtaining its supply

portfolio. And the availability of relatively inexpensive shale gas has had a major impact on the supply resources that Delmarva obtains.

Statutorily-Imposed Requirements. There are at least three statutory requirements that affect Delmarva's selection and evaluation of supply options. First, the Energy Utility Restructuring Act of 1999 explicitly requires Delmarva to purchase *at least* 30% of its resource mix through the regional wholesale market through a bid procurement or auction process overseen by the Commission. *Id.* Since at least 2004, Delmarva has obtained 30% of its supply through a competitive reverse auction process for laddered three-year supply contracts that places no restrictions on the energy mix of the supply procured therefrom. Price is the sole consideration.

Furthermore, as a result of the General Assembly's enactment of the REPSA in 2005,³ Delmarva and third-party electric suppliers are obligated to develop a "minimum level" of renewable supply resources in their supply portfolios, which is accomplished through their purchase of renewable energy credits ("RECs") and solar renewable energy credits ("SRECs").⁴ According to the IRP, Delmarva's renewable resource portfolio includes three contracts for onshore wind power totaling up to 128 MW; a contract with the Dover Sun Park for 70% of the 10 MW that the Sun Park generates; contracts entered into with various solar providers through the 2012 and 2013 SREC Procurement Program; and the potential for RECs and/or SRECs associated with the qualified fuel cell provider project. (2012 IRP at 15, 21-22). Additionally, since the IRP was filed, Delmarva has entered into a Commission-approved contract with

³ 26 Del. C. subch. III-A (2005).

⁴ The General Assembly amended the REPSA in 2011 to make Delmarva responsible for procuring all renewable energy credits and solar renewable energy credits for itself and for all third-party suppliers of energy in Delaware, but that portion of the REPSA amendment is not relevant to the IRP discussion.

Washington Gas Energy Services, Inc. ("WGES") to purchase SRECs generated from WGES' two Delaware solar installations. (Docket No. 13-99, Order No. 8396 dated June 18, 2013).

Finally, as noted above, in 2011, the General Assembly amended the REPSA to include fuel cells within the definition of "eligible energy resources" able to generate RECs and/or SRECs and obligated Delmarva to purchase energy supplied by a qualified fuel cell provider project.⁵

The Public Advocate noted the effect of these mandatory requirements in his comments on the 2010 IRP:

Development of an IRP or a long-term procurement plan requires a significant amount of time and expertise; however, the time and effort required to develop a procurement plan appears to be less extensive than that for an IRP. [Delmarva] determined in its current and previous IRPs that it was most reasonable to meet its energy and peak demand requirements through a series of Full Service Agreements (FSA) for its Standard Offer Service customers. While the Company's strategy for meeting load in the future may change in future IRPs, *it can be argued that Delmarva's procurement plan is stable and that development of a long-term procurement plan may be more appropriate for the Company than development of an IRP. ... Delaware is one of only three states where the electric utility industry has been restructured and utilities must develop an IRP.*

(Public Advocate Comments, p. 25 (emphasis added))

(<http://www.depsec.delaware.gov/IRP/DPA/%20IRP%20Comments.pdf>)).

Outside Factors. Other factors also significantly influence Delmarva's selection and evaluation of supply options that will meet its customers' needs at a minimal cost. First, EPA regulations affect the resource mix available to Delmarva to meet its customers' supply needs. For example, EPA power plant emission regulations have led to the retirement of many coal plants because retrofitting those plants to meet the new regulations is not cost-effective. Similarly, PJM-promulgated wholesale market rules affect the supply available for purchase. (See IRP at 78-83). And perhaps most important, the discovery of vast reserves of shale gas

⁵26 Del. C. §364.

throughout the continental United States has caused a sharp decrease in natural gas prices, which in turn has caused natural gas generation to displace generation produced from other fossil fuels. (See IRP at 32-33).

While EURSCA gives Delmarva the ability to site and own new generation, the need for Delmarva to do so may be diminishing. New supply sources supply are coming into Delaware: Calpine has already broken ground on a 300 MW gas fired generator in Dover and plans to add another 300 MW plant in the future. Additionally, a natural gas peaking plant is planned for construction near Harrington. Furthermore, DEC recently began operating a 4 MW solar farm which has the potential for expansion, and an additional 34.9 MW of solar power is shown as under construction in the PJM queue (see <http://pjm.com/planning/generation-interconnection/generation-queue-active.aspx>). Given these mandates, Delmarva's discretion to obtain supply outside the Restructuring Act and REPSA requirements is limited, and the IRP is essentially an expensive, useless exercise.

Despite Its Huge Expense, The IRP Process Has Resulted in No Identifiable Benefits to Delmarva Ratepayers.

From 2006 through 2012, Delmarva has incurred over \$4.9 million in expense associated with the IRP process. (Docket No. 13-115, Delmarva Response to PSC-RR-33 (Attachment)). Other parties involved in the process (such as the Public Advocate, Staff, and DNREC for the State and entities such as the Caesar Rodney Institute, NRG Energy, the Sierra Club, the Mid-Atlantic Renewable Energy Coalition) have attended the numerous IRP meetings, expending time and money that they could have spent on other matters. Furthermore, additional costs are incurred in developing and amending regulations governing the IRP process. Delmarva has also stated that it expects to spend more than \$1.7 million on each future IRP. (Docket No. 13-115, Delmarva Response to PSC-RR-34)).

Delmarva seeks to recover *every penny* of its past (and future) IRP expense from its ratepayers, arguing that 26 Del. C. §1007(c)(1)d authorizes full recovery of its IRP costs through nonbypassable distribution rates).⁶

What benefits have ratepayers received for this enormous expense? The Public Advocate is hard-pressed to identify even one.

Some might argue that it has resulted in a decrease in standard offer service (“SOS”) rates. As Delmarva states in the 2012 IRP Executive Summary: “The retail energy supply rates experienced by Delmarva Power’s Standard Offer Service (SOS) customers have been stable and decreasing since the last IRP was prepared in 2010. Since 2006, residential SOS customer energy supply rates for the summer period have fallen from 11.07 cents/kwh to 9.55 cents/kwh in 2012.” But that decline would have occurred without the IRP; it is solely a function of the market.

Some might argue that the requirement that Delmarva purchase renewable energy for its supply portfolio is a benefit. But that requirement did not come from the IRP; it came from legislative action in the form of the REPSA and the amendments thereto. And if it is a benefit, it is one that accrues to all Delawareans, not simply Delmarva customers, so all Delawareans should pay for it. Furthermore, the Renewable Energy Task Force (“RETF”) created in 26 Del. C. §360(d) is responsible for (among other things) “[e]stablishing REC and SREC aggregation mechanisms and other devices to encourage the deployment of renewable, distributed renewable, and solar energy technologies in Delaware with the least impact on retail electricity suppliers, municipal electric companies and rural electric cooperatives” and making recommendations to the Commission, the DNREC Secretary, the boards of directors of rural electric cooperatives and local regulatory authorities regarding the above, and those entities are directed to promulgate

⁶ In Docket No. 13-115, the Public Advocate has taken the position in prefiled testimony that a normalized level of IRP costs should have been included in the Company’s distribution rates, rather than a dollar-for-dollar recovery of all expenses incurred to date, based on Commission Order No. 7003 in Docket 06-241.

rules and regulations or adopt policies based on the RETF's findings. 26 *Del. C.* §360. Clearly, the RETF's conclusions and recommendations would seem to carry greater weight than anything from an IRP which only examines Delmarva's SOS customers' needs and which the Commission does not even approve.

Others may claim that the IRP enables Delmarva customers to see the source of their energy supply. However, Delmarva already discloses this information to its customers through an annual bill insert and on its website (<http://www.delmarva.com/res/documents/DEFuelMix.pdf>). And while that knowledge may hold value to some customers, the Public Advocate submits that there are far more customers for whom the total cost of their monthly electric bill, and whether or not they are able to afford it, is of more immediate concern than the source of the energy supplied to them. (As an aside, the Public Advocate notes that once the electrons get into the transmission pipeline, they are indistinguishable from one another). In any event, this information is only applicable to Delmarva's customers; Third-party providers supply more than half of annual kWh sales in Delaware (approximately 53% as of July 26, 2013),⁷ and municipal utilities serve many more customers. *Those* customers may not see the sources of their energy supply unless the third-party provider is using a particular source to entice customers to purchase supply from it or the municipal utility determines that it will advise its customers of its resource mix.

Even if some benefit from the IRP could be found - a hypothesis the Public Advocate rejects - is that benefit worth the costs imposed on Delmarva customers? The statutory charge of the Public Advocate is to advocate for the lowest reasonable rates for residential and small commercial utility consumers, consistent with an equitable distribution of rates and the maintenance of reliable utility service. This means ensuring that the costs incurred by any utility

⁷ <http://www.depsec.delaware.gov/electric/DPSC%20Choice%20Report.xls>

are necessary for the safe, adequate and reliable provision of a utility service. The IRP does nothing to advance any of those criteria. And it bears repeating that no other electricity supplier in the state is required to prepare and submit an IRP.⁸

We do not dispute that Delmarva must continue to examine its supply options and make changes as conditions warrant. But it is capable of doing so without going through the expensive IRP process. Delmarva has filed IRPs in 2008, 2010 and 2012. Each one has reached essentially identical conclusions, and none has suggested any substantive change from the preceding Delmarva procurement process. Burdening Delmarva's customers with this enormous expense every two years essentially punishes Delmarva distribution customers for being Delmarva distribution customers.

As An Alternative to Repealing the IRP, It Should Be Part of the Delaware Energy Plan

In the event there is no desire to repeal the IRP requirement, there are alternatives that would be less costly but would provide the information that the General Assembly apparently seeks. In 2003, the General Assembly enacted the Delaware Energy Act (74 Del. Laws c. 110; 29 *Del. C.* ch. 80, subch. II). One of the policies behind the Energy Act was “... the development of a comprehensive state energy policy which will ensure an adequate, reliable and continuous supply of energy and which is protective of public health and the environment and which promotes [Delaware's] general welfare and economic well-being.” 29 *Del. C.* §8051(b)(5). The Energy Act has subsequently been amended to create the State Energy Office within the Department of Natural Resources and Environmental Control (*id.* §8053); a Cabinet Committee on Energy, which serves the Governor in an advisory capacity (*id.* §8054); the

⁸ And before one argues that Delmarva is the only Commission-regulated electric distribution company, remember that: (1) the IRP concerns electric *supply*, not electric distribution; and (2) Delmarva is required to submit its IRP report to the Governor and the General Assembly *in addition to* the Commission. The General Assembly could easily impose an IRP requirement on other providers of retail electric supply and require those providers to submit reports to it and the Governor.

Governor's Energy Advisory Council, which is tasked with "monitor[ing] Delaware's energy system, identify[ing] and propos[ing] actions to enhance Delaware's energy system and provid[ing] counsel to the Governor on promoting an economic, reliable and competitive energy market for all Delaware consumers" (*id.* §8055); and the Sustainable Energy Utility (*id.* §8059). Importantly for purposes of these comments, the Governor's Advisory Council is responsible for "spearheading the updating of the Delaware Energy Plan every five years" *Id.* §8055(c)(2). It seems redundant (not to mention wasteful) for Delawareans who are also Delmarva customers to pay for an energy plan every five years and an IRP every two years.

Moreover, the Public Advocate struggles to understand the rationale for requiring an IRP every two years, given that the State's energy plan (which affects every Delawarean) is only updated every five years. At the very least, the duration between IRPs could be lengthened to correspond with the submission of the state's energy plan and/or the IRP could be included as part of that plan.

Conclusion

Although well intentioned, the IRP requirement imposed on Delmarva – and Delmarva alone – has not resulted in any measurable benefit for Delmarva's customers compared to what it has cost (and will continue to cost) them. No harm will befall Delmarva customers if the IRP is eliminated. Much has changed since the EURCSA was enacted, and those changes have rendered some of its provisions (such as the IRP requirement) superfluous.

The Public Advocate is well aware that the Commission cannot unilaterally decide to jettison the IRP requirement. However, the Commission could do much to convince the General Assembly of its irrelevance in a deregulated supply environment (and the Public Advocate will provide its full support to the Commission and any other interested party in trying to do so). The

cost to deliver electricity to Delmarva's customers is projected to increase in the coming years, and any action that can be taken to reduce the impact of those increases ought to be taken as soon as possible. Work on the 2014 IRP will begin soon, so there is no time to waste.

Respectfully submitted,

/s/ Regina A. Iorii

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Dated: September 16, 2013

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CERTIFICATE OF SERVICE

I hereby certify that on September 16, 2013 I caused the attached **COMMENTS OF THE DIVISION OF THE PUBLIC ADVOCATE** to be served on all persons on the accompanying service list in the manner indicated thereon.

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PSC Docket No. 12-544
As of 09/10/13

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